

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to investigate whether it should adopt standards for deployment and access to advanced services.

Application No. NUSF-65

QWEST CORPORATION'S INITIAL COMMENTS

Qwest Corporation ("Qwest") submits its initial comments as directed by the Commission's Order Opening Docket and Seeking Comment (the "*Order*") dated January 17, 2007 as follows. Qwest has numbered its comments as responses to the eight questions posed in the *Order*.

Introduction

At the outset of this docket, Qwest observes that it is appropriate for the state of Nebraska to begin looking at creative alternatives that provide the appropriate incentives for broadband providers to deploy broadband services in un-served locations within Nebraska. Providing support for broadband services, however, should not include adding additional regulatory burdens to existing Nebraska Universal Service Fund ("NUSF") distributions, which is targeted to the provision of basic local exchange service. Rather, broadband expansion should be effectuated through a separate mechanism not tied to basic services. Qwest therefore proposes that the Commission consider establishing a separate, dedicated fund for the purpose of extending wireline broadband service to un-served locations, administered in a fashion similar to distributions under Docket No. NUSF-7. The fund could be created by using available

funds not distributed through existing Nebraska Universal Service Fund ("NUSF") mechanisms, or through some other means.¹

Qwest opposes increased regulation over the existing level of funding – which in Qwest's case, is scheduled to dramatically decrease over the next few years. In this docket, the Commission appears to be considering the imposition of additional investment requirements and regulations tied to existing distributions of high cost fund support. NUSF high cost support is already less than the costs of providing basic local exchange service (even considering customer revenue), as demonstrated by the Commission Staff's models from Docket No. NUSF-26. In addition, imposing additional regulatory compliance thresholds will lead to minimum levels of broadband at possibly high prices, rather than maximum levels of broadband made available to Nebraska consumers at more affordable prices. The Commission must refrain from adding additional requirements on an already strained fund. If any such requirements or regulations are adopted, the Commission must allow carriers a reasonable opportunity to meet established targets without suffering unreasonable consequences. Otherwise, if carriers lose money and support for basic local exchange services for failure to

¹ Alternatively, the Commission could pursue a legislative solution to create a separate broadband grant fund from general tax revenues. In Qwest's region, other states, such as Utah and Idaho have taken legislative initiatives in order to advance broadband services through a grant process, establishing broadband grant programs through general tax funds. Senate Bill Number 1498, was enacted by the 2006 Idaho legislature, appropriated \$5 million in dedicated funds to the Department of Commerce and Labor for a new Rural Broadband Development Matching Fund. The Fund was established to make monetary awards, on a cost reimbursement basis, to eligible applicants for rural broadband investment projects selected for funding. Combined with the state funded grants and the dollar-for-dollar cash match, the Idaho fund will finance 79 projects that will allow for broadband service to offered to more than 50,000 potential new subscribers in rural locations. Senate Bill Number 268, passed by the Utah legislature in 2006 and awaiting the Governor's signature, established a Rural Broadband Service Fund to be used for grants for providers deploying broadband service in rural areas in Utah.

comply with broadband deployment regulations, Nebraska consumers will not only lose ground with respect to broadband deployment, but basic local exchange services will suffer, as well.

Qwest explains its position with reference to the eight questions posed by the Order, set forth in order below. Because of Qwest's stated position with respect to the first question, however, the remaining seven questions are to some extent rendered moot. Even so, Qwest provides comments to the additional questions in order to underscore the difficulties with imposing additional requirements on the existing high-cost fund.

1. Question: Whether standards for broadband deployment should be adopted for Nebraska eligible telecommunications carriers (NETCs) receiving high-cost program support.

Qwest Response: No. The Commission should not adopt standards for broadband deployment.

- A. The Commission should either use undistributed NUSF high cost funds to support approved broadband deployments or pursue a separate, dedicated fund established with general tax monies.**

Qwest supports the creation of a separate, dedicated fund to support incentives to carriers for deploying wire-line broadband facilities. This separate broadband fund should be available as necessary to provide an incentive to carriers to deploy broadband wire line services to areas presently un-served by such broadband technology. The amount of such support should be capped at 50% of the investment needed to provide broadband to the un-served area. The support would be a one-time payment for deployment costs, with no support provided for on-going operational costs. The fund could be administered in a manner similar to the distribution of NUSF-7 funds

presently, but using carefully drawn standards for determining the most efficient wireline broadband solution for the un-served areas. Whether funded with undistributed NUSF support or through a legislative solution, Qwest supports a separate broadband fund because the current fund distributions cannot support both broadband and basic local exchange service, and a separate broadband fund would encourage greater investment in broadband across Nebraska, while limiting the burden of surcharges on consumer bills for telecommunications services.

- B. It is not appropriate to divert money from the existing high-cost fund to support the deployment of broadband services because the existing support is not sufficient to support the costs of providing basic local service in the supported high-cost areas of the state.**

The primary objective of the Nebraska Universal Service Fund ("NUSF") is to "establish a funding mechanism which supplements federal universal support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices." NEB. REV. STAT. § 86-317. A secondary purpose of the NUSF articulated in NEB. REV. STAT. § 86-323(2) and (3) is to provide access to advanced services and telecommunications services across the state.

The NUSF has limited resources, and it cannot support every salutary goal of universal service without an immense surcharge. In that context, the Commission has made careful choices regarding how the limited available funds will be targeted. The support mechanisms established in NUSF-26 and refined in NUSF-50 "support only the loop."² As such, the high cost fund supports "basic local service as defined in the

² Docket No. NUSF-26, Findings and Conclusions, November 3, 2004, ("NUSF-26 Order"), ¶ 13.

Nebraska Universal Service Fund Rules and Regulations.”³ Thus, the Commission has determined that access to advanced and information services is best facilitated by “support of the underlying physical network.”⁴

Evidence before this Commission in other dockets confirms that the support that is provided is less than the costs of providing services. Indeed, in Docket No. NUSF-26, support was computed by determining the costs to provide basic local exchange services,⁵ but the computed costs of providing services were collectively much higher than the available funds. As a result, the cost methodology in Docket No. NUSF-26 was used only to provide relative costs, so that the limited funds available could be allocated equitably.⁶ While Qwest may disagree with the particular applications and implementation of the cost models used in Docket NUSF-26, it is undisputed that the costs developed by the Commission’s own model in that docket indicate that the current support level (even including an allowance for customer revenue) is less than the costs of providing basic local service, much less advanced or information services.

Because support and other revenue sources are not sufficient to cover the costs of providing basic local service in the supported high-cost areas of the state, any requirement for broadband deployment would require NETCs to take money presently dedicated to the provision of basic local services and invest that money in the provision of advanced and information services.

³ NUSF-26 Order, ¶ 33-34.

⁴ *Id.*, ¶ 38.

⁵ In Docket NUSF-26, the costs of providing local exchange services were approximated by determining the costs of providing the local loop.

⁶ See Testimony of David Rosenbaum, Docket No. NUSF-26, filed August 11, 2004, p. 2-5; Docket No. NUSF-26 Progression Order No. 4, January 7, 2003, ¶ 26.

Therefore, Qwest urges the Commission to refrain from imposing requirements on the use of existing levels of USF support for basic local exchange service. Instead, Qwest supports a separate, dedicated broadband deployment fund to establish a support program for the purpose of assisting in funding wire-line broadband deployment to un-served locations in Nebraska.

2. Question: How should the Commission define broadband for the purposes of this investigation? Should the Commission use the definition adopted by the Federal Communications Commission (FCC)?

Qwest Response: Qwest does not support adding additional requirements to existing NUSF distributions. However, a uniform definition of "Broadband" may be necessary for establishing a separate Broadband Fund.

Qwest does not support additional regulations related to existing NUSF high cost support. However, for the purpose of establishing a separate broadband fund, the Commission may need to establish a uniform definition of "broadband". Qwest supports adopting the bit rate speeds adopted in the Federal Communications Commission's (FCC's) definition of "broadband" of 200 kbps in at least one direction used for purposes of reporting broadband deployment in the FCC Form 477.⁷ Qwest proposes the following definition for Broadband for purposes of adopting a standard for deployment and access to advanced services in Nebraska: **"'Broadband' means wire line technology identified as having the capacity to transmit data from and to a subscriber's computer to the Internet or Internet-related services at a minimum rate of data transmission of 200 kilobits per second."**

⁷ FCC Report and Order released November 12, 2004 in WC Docket No 04-141, 19 FCC Rcd 22340 (2004)

However, as the Commission evaluates broadband deployment in the state, a simple, static definition standing alone may not advance the state's broadband objectives. Some broadband offerings provide far more than 200 kbps, and different offerings have different costs. Qwest's proposal accounts for these differences. Since under Qwest's proposal all broadband project proposals will be evaluated in terms of the number of un-served customers reached with new connections and the speeds and services provided, the most efficient use of the funding should be ensured.

To illustrate, take a hypothetical set of carriers, both of which serve 100 customers. The first carrier provides 80 of its customers with high speed internet ("HSI") services at a bitrate of 256 kbps, at a price of \$70 per month. The cost of providing an additional 5 customers with 256 kbps service is \$50,000. The second carrier provides 75 of its customers with HSI services at a bitrate of 1.0 Mbps, at a price of \$50 per month. The cost of providing an additional 5 customers of the second carrier with 1.0 Mbps service is \$50,000. It would be difficult to determine which of these carriers is doing a better job of providing "broadband" to Nebraska consumers, or which investment in additional deployment is more worthwhile, with only a static definition of what bitrate constitutes "broadband" as a guide. Yet if the Commission decides to place additional compliance standards on existing fund distributions, the Commission will have to use a static definition of "broadband" that could mean that one these hypothetical carriers is out of compliance, and one carrier is in compliance.

The separate, dedicated fund Qwest suggests would evaluate broadband deployment on a case-by-case basis, and determine in a forward-looking, proactive manner how most efficiently to deliver broadband services to consumers. Compliance

thresholds and static definitions of broadband can look only backwards.

3. ***Question: What should be the deployment threshold if the Commission adopts standards? Should the Commission measure deployment on a percentage basis, such as percentage of customers or percentage of area served?***

Qwest Response: Qwest does not support adding additional requirements to existing NUSF distributions. Establishing a deployment threshold would be too complex to be useful, and would also create regulatory incentives for minimum levels of compliance. Establishing a separate broadband fund would incentivize efficient broadband deployment of maximum amounts of bandwidth to maximum numbers of Nebraska consumers.

As an initial matter, given that the Commission does not have appropriate jurisdiction to regulate broadband – an interstate service – it is difficult to understand how it can demand that NETCs provide a minimum level of deployment of such an unregulated service. Even setting aside jurisdictional problems, strict deployment threshold targets insufficiently measure broadband deployment.

First, determining appropriate deployment thresholds requires significant factual investigation. Before any requirements are added to existing distributions, the Commission should make evidentiary findings (a) that broadband deployment is progressing unsatisfactorily without additional regulation, and (b) what level of additional broadband deployment the present distributions can afford to provide without threatening the provision and maintenance of basic local exchange service.⁸ Only after developing a record sufficient to answer both of these questions can the Commission

⁸ As discussed in response to Question 5 below, the response to the second question may be different for under-earning carriers than it is for over-earning carriers.

proceed to determine an appropriate target for broadband deployment, and then determine how compliance with that target will be measured, whether by deployment thresholds measured by percentage of customers or areas served, or by some other method.

In order to answer either of the above two questions properly, the Commission must properly define "broadband," and must also determine an appropriate measurement of different carriers' broadband offerings. In response to question 2 above, Qwest introduced two hypothetical carriers, one with 80% penetration of 256kbps service at \$70 per month, and one with 75% penetration of 1.0Mbps service at \$50 per month. Assuming the Commission chooses the FCC definition of broadband (200kbps), both carriers are providing at least some broadband. However, setting a standard of compliance of 79% penetration might result in the second carrier being at risk of losing NUSF distributions, even though for most of its customers, it is providing a far more valuable broadband service at a lower price than the first hypothetical carrier.

The hypothetical example here represents just a few possible permutations of the determinations the Commission would have to make in order to establish, and later enforce, a particular deployment threshold for broadband deployment compliance applied to existing NUSF high cost distributions. Taken together, the spectrum of possible permutations demonstrates that establishing an arbitrary deployment threshold of an arbitrary bitrate level that constitutes "broadband" is unworkable. Establishing an arbitrary threshold would only encourage minimum compliance with the standard, as economic carriers would only invest the minimum required to meet the standard, which will lead to inefficient investment. In contrast, a forward-looking, proactive approach

using a separate, dedicated fund could target maximum bitrates to maximum numbers of consumers. With competition over a separate fund, carriers will seek to create efficient projects that provide more bandwidth to more people at less cost, which not only will provide broadband at levels suitable for long-term economic use, rather than short-term compliance with standards, but also may help keep broadband prices lower.

If the Commission wishes to provide incentives for deploying broadband, then investment aids to construction provide a more constructive alternative in order for the Commission to achieve this goal. A forward-looking, proactive approach using a separate, dedicated fund could target maximum bandwidth to maximum numbers of consumers. With competition over a separate fund, carriers will seek to create efficient projects providing broadband at levels suitable for long-term economic use, rather than short-term compliance with standards. In this respect, a separate fund is especially superior to minimum compliance standards applied to existing distributions.

4. Question: What should be the timeline for reaching any broadband deployment standard? Should the standard be fixed or should it gradually increase such as 60 percent in 2007, 70 percent in 2008, etc.

Qwest Response: Qwest does not support adding additional requirements to existing NUSF distributions. If Additional Regulations Are Adopted to use high cost support from the existing NUSF, The Commission Should Consider Reasonable Compliance Timelines and Reasonable Consequences for Failure to Meet Broadband Deployment Standards.

If the Commission elects to condition NUSF high cost support on specific levels of broadband penetration, rather than funding deployment incentives through a separate, dedicated fund, carriers should be given a reasonable period of time to meet those standards. As noted above, current support for basic local exchange service

(even considering customer revenue) falls short of the costs of providing service according to the models used in NUSF-26. If the Commission adds requirements for broadband deployment, the Commission should not make immediate compliance with deployment targets a condition of continued support, or else carriers will not be able to continue to properly provision, support, and maintain basic local exchange services in the high-cost areas for which support is currently allocated. It would be counterproductive and illogical for carriers to lose support for basic local exchange services due to non-compliance with new broadband standards, because current levels of support are insufficient to support basic services without even considering new requirements for broadband deployment.

This potential for counterproductive consequences is a key reason for Qwest's proposal for a separate broadband fund. If a separate fund is not adopted, however, the Commission should phase in any deployment standard over a period of three to five years. A transition period would allow carriers to adjust their business plans to accommodate the prospect of increased investment requirements in an atmosphere of decreasing support.

5. Question: If the Commission measures deployment on a percentage basis, how should the Commission measure it?

- i. What are the merits of measuring standards on a company/statewide basis?**
- ii. Should the standards be measured on a disaggregated basis such as the exchange basis? Why or why not?**
- iii. Should the standards be measured on a support area basis? Why or why not?**
- iv. Should the standards be measured on any other basis?**

Qwest Response: Qwest does not support adding additional requirements on an already strained NUSF. If additional regulations are adopted, those standards should measure broadband deployment across the NETC's entire service area.

- A. The Nebraska Telecommunications Universal Service Fund Act sets a policy aimed towards statewide broadband availability.**

A statewide broadband deployment policy is consistent with the legislative policy in the Nebraska Telecommunications Universal Service Fund Act (the "NTUSF Act") that access to advanced and information services "should be provided in all regions of the state."⁹ The statutory policy goals do not direct the Commission to support broadband only in cities, only in small towns, or only in high cost areas, but "in all regions of the state." No statutory language allows the Commission to limit the deployment of information services or advanced services to rural or high cost areas. The success of the NUSF in meeting the goals defined in the statutory scheme is measured on a statewide basis.

⁹ See Neb. Stat. 86-323(2)

As noted above, Qwest supports the adoption of a separate broadband fund for broadband deployment for Nebraska customers. The separate fund envisioned by Qwest would be statewide and geographically neutral, aiming at the most efficient deployment of broadband rather than favoring rural or urban consumers, or favoring customers of one carrier or class of carrier over another. If such a fund were adopted, one-time incentives should be given to network providers to deploy approved wire-line broadband projects. The Commission could use undistributed surcharge collections to fund broadband deployment, and apportion those dollars based on the effectiveness of proposed projects in providing maximum numbers of un-served customers with broadband. A separate fund best accomplishes the statutory goal of a statewide broadband policy.

If, however, the Commission elects to impose additional investment standards for broadband on top of existing investment standards for basic services under the existing fund structure, Qwest recommends that the Commission establish a target for NETCs receiving high-cost support measured by the percentage of customers for which broadband service, as defined above, is available across the carrier's entire service territory, consistent with the statewide broadband policy envisioned by NEB. REV. STAT. § 86-323.

B. If additional regulations are adopted relative to the existing distributions, those standards should measure broadband availability based on customers, not areas.

The measurement of "percentage of area served" is not an adequate measure of deployment. The Commission should focus its efforts on making sure *people* have broadband access, not *areas*. A "percentage of area served" standard is far too broad

and does not provide a reliable indication of the level of broadband service available to customers. The measurement chosen should reflect the level of broadband service available to consumers. "Area served" removes customers from the equation by misplacing the focus of the measurement on geography rather than the consumer.

If Qwest's proposals are rejected and standards are adopted, measuring broadband deployment across a provider's entire service territory supports this goal by making sure no particular area is favored or disfavored for broadband deployment. In addition, measuring deployment for an entire service territory provides incentives for carriers to deploy broadband to the most customers possible. Measuring broadband deployment on an exchange basis could distort broadband deployment statistics to the extent such measurements favor broadband deployment to smaller numbers of people in smaller exchanges. This problem would be exacerbated if broadband targets were limited to support areas, which are subsets of exchanges. If the goal of the Commission is to support broadband deployment across the state – and the statute requires that goal – the only way to set targets for broadband deployment is on the total percentage of customer's with broadband available.

6. ***Question: How should the Commission treat carriers who do not meet the broadband standards? Should the carrier be disqualified from receiving support? Should this affect their NETC eligibility?***

Qwest Response: Qwest does not support adding additional requirements to the existing NUSF distributions. If Additional Regulations Are Adopted to use high cost support from the existing strained NUSF, The Commission Should Reduce High-Cost Support Only If No Progress Is Being Made Towards Deployment Targets and Carriers Maintain Earnings Above Established Earnings Caps.

Cutting support for high cost areas as a penalty for non-compliance with

additional regulation would harm carriers' abilities to properly support basic local exchange service. If carriers demonstrate the ability to maintain profitability, however, high-earning carriers may be able to afford to progress towards any benchmarks that are established. Under the current distribution methodology, the Commission has established earnings caps of twelve percent, over which high-cost support is reduced. These earnings caps were developed as a measure of reasonable profitability. Carriers earning above this level may be able to afford to invest at higher levels in advanced services and broadband technology. Carriers earning below these levels cannot. Therefore, as long as carriers are earning less than established earnings caps (currently 12 percent), no support should be withheld for failure to progress towards any broadband deployment standards.

7. Question: Should there be a waiver process? If so, how should the waiver process be implemented?

Qwest Response: Qwest does not support adding additional requirements to existing NUSF distributions. If additional regulations are adopted to use high cost support from the existing strained NUSF, the Commission should consider a reasonable waiver process for high-earning carriers.

If additional broadband regulations are adopted, the Commission should establish a waiver process for carriers to justify any failure to progress towards any broadband deployment goals. Any such process should permit carriers to demonstrate that diverting investment dollars to broadband services would or could impact basic local exchange service negatively. In establishing any waiver process, the Commission should keep in mind that the first and primary goal of the NUSF is to support basic local exchange service.

8. ***Question: How should the Commission treat NETCs who provide service through the leasing of facilities such as unbundled network elements (UNEs)? Should they be required to meet any broadband deployment standards?***

Qwest Response: If additional regulations are adopted regarding existing NUSF distributions, the Commission should confine broadband support to carriers that build broadband networks.

If the Commission decides to require carriers to invest existing high-cost distributions to provide broadband service, the Commission cannot continue to provide support for carriers that do not provide broadband service over their own networks. Currently, competitive NETCs ("CETCs") obtain portable support whenever they win customers from the incumbent carrier. The porting of this support hampers the ability of incumbent carriers to invest in their basic local exchange networks, particularly under the current porting system. Continuing to support carriers that do not invest in broadband services would create an untenable situation if the Commission requires the deployment of such advanced services.

Porting support away from carriers that build networks, towards carriers that simply lease networks, accomplishes only one thing: diluting support for the existing network. Porting will therefore make it increasingly difficult for incumbent carriers to invest in broadband services and would frustrate any objective to increase broadband penetration across Nebraska. In order to achieve any goal of broadband deployment, the Commission must support a single broadband network to provide those services, just as the Commission currently supports a single network to provide basic local exchange services.

Moreover, porting support to carriers that do not build broadband networks would not be competitively neutral, which would violate both federal and state requirements for universal service funds. Carriers must be subject to the same investment requirements in order to get the same support. Otherwise, carriers that do not build networks gain competitive advantages over those that build the networks. As competitive carriers exploit those advantages, the incumbent's market share will be uneconomically eaten away, and its ability to invest in broadband will suffer the same fate. Thus, to support broadband investment and to keep the fund competitively neutral, the Commission must discontinue porting NUSF support if broadband standards are adopted.

Conclusion

Qwest supports the general policy of creating incentives through the establishment of a separate broadband fund for the deployment of broadband services to un-served locations. Increasing regulation without increasing support will frustrate both the existing and future goals of the NUSF. Qwest's alternative proposals to either use undistributed high cost funds to support approved broadband projects, or to seek a tax-supported fund for such purposes, would not adversely impact existing basic local exchange support, would be competitively neutral, and would provide the Commission with the requisite flexibility to make sure all Nebraskans, across the state, receive broadband services as quickly as possible.

Dated Friday, March 16, 2007.

Respectfully submitted,

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